



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0025; Notice 1]

Daimler Trucks North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America, LLC, (DTNA), has determined that certain model year (MY) 2019-2022 Thomas Built school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus Emergency Exits and Window Retention and Release*. DTNA filed an original noncompliance report dated February 9, 2022, and amended the report on April 13, 2022. DTNA petitioned NHTSA on March 1, 2022, and later amended the petition on April 13, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of DTNA's petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.

- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Daniel Lind, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7235.

SUPPLEMENTARY INFORMATION:

I. Overview: On November 20, 2020, NHTSA requested information from DTNA regarding a test failure with S5.5.3(a) *Emergency Exit Identification and Labeling*, in a 2019 Thomas Saf-T-Liner School bus. NHTSA received DTNA's response on December 18, 2020, and on January 26, 2022, NHTSA requested that DTNA provide additional information or file a noncompliance report, if it determines that there is a noncompliance.

As a result, DTNA determined that certain MY 2019-2022 Thomas Built school buses do not fully comply with paragraph S5.5.3(a) of FMVSS No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217).

DTNA filed an original noncompliance report dated February 9, 2022, and amended the report on April 13, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DTNA petitioned NHTSA on March 1, 2022, and amended the petition on April 13, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of DTNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 28,814 MY 2019-2022 Thomas Built Saf-T-Liner HDX, EFX, C2, and Minotour school buses, manufactured between September 28, 2018, and February 23, 2021, are potentially involved:

III. Noncompliance: DTNA explains that the subject school buses are equipped with "Emergency Exit" and "Emergency Door" labels that do not meet the letter height requirements,

as required by paragraph S5.5.3(a) of FMVSS No. 217. Specifically, some of the letters are 4.9 cm, instead of the required minimum 5 cm letter height.

IV. Rule Requirements: Paragraph S5.5.3(a) of FMVSS No. 217 includes the requirements relevant to this petition. Each school bus emergency exit provided in accordance with S5.2.3.1 of FMVSS No. 217 is required to have the designation “Emergency Door” or “Emergency Exit,” as appropriate, in letters at least 5 centimeters high, of a color that contrasts with its background.

V. Background: DTNA says that prior to filing a noncompliance information report for the subject noncompliance, in March of 2020 NHTSA notified DTNA of a potential noncompliance regarding the emergency exit identification labeling in its buses. In April 2020 DTNA responded to NHTSA and stated its belief that the label “should be considered compliant” because, “with standard rounding, the label-letters met the requirements.” In its response, DTNA also contended that NHTSA had previously audited the labels in 2014 and found them to be compliant. Then in November 2020, DTNA stated that it received an information request from the Agency, to which DTNA responded by explaining that “1) the labels meet the requirements of FMVSS [No.] 217 following the agency’s rules of rounding and precision and 2) were the exact same labels had previously been reviewed by the OVSC and found to be compliant during OVSC compliance testing.” On January 31, 2022, DTNA received another letter from the Agency requesting that DTNA submit additional information or file a supporting noncompliance report. DTNA says that it decided to file the noncompliance report “in order to avoid a protracted dispute with the agency.”

VI. Summary of DTNA’s Petition: The following views and arguments presented in this section, “VI. Summary of DTNA’s Petition,” are the views and arguments provided by DTNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. DTNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA says “The relevant labels were designed with letters at least 5 cm and reasonably believed at all relevant times that they complied with FMVSS [No.] 217 under applicable law, including NHTSA’s public statements regarding numerical rounding.”

DTNA contends that NHTSA has granted the following petitions in which the letters did not meet the minimum letter height requirement:

- Kia Motors America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 41332 (July 8, 2004);
- General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (July 9, 2004); and
- Hyundai Motor Co., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 41568 (July 9, 2004)

DTNA also states that NHTSA has previously granted two inconsequentiality petitions that “could lead to crowding of passengers trying to flee an exit.” In the first case¹, “buses were manufactured with only one emergency exit instead of two” and in the second case², “emergency exits were mounted under the same post and roof bow panel space.”

DTNA states its belief that although the letter height is 0.1 cm less than the requirement, the letters “are sufficiently large as to aid passengers fleeing an emergency” and that the labels meet all other applicable FMVSSs. DTNA believes that because some of the letters exceed the 5 cm minimum requirement, “the reasonable aggregate perception of a viewer is that the letters are 5 cm or more.” DTNA further stated their belief that the 0.1 cm difference does not obscure the labels or the purpose of the label since the labels are in bold letters that contrast against the background of the labels.

DTNA claims that it is not aware of any complaint, accident, injury, or death resulting from the subject noncompliance.

¹ See New Flyer of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 63 FR 32694 (June 15, 1998)

² See IC Corporation, Grant of Petition for Decision of Inconsequential Noncompliance, 70 FR 24464 (May 9, 2005)

DTNA contends that “there is a substantial question whether or not there is fair notice as to how a manufacturer is to comply with FMVSS [No.] 217 (and potential scores of other FMVSSs) given the agency’s past statements on numerical rounding.” DTNA believes that NHTSA’s statements with respect to the rounding method it uses³ and the rounding method provided in the FMVSS No. 111 test procedure are contradicted by a 1990 NHTSA interpretation⁴ which states that an FMVSS will specify when rounding is appropriate. DTNA claims that NHTSA’s “procedures for comparing numbers to a standard is ambiguous,” therefore, DTNA states that it lacked “fair notice as to which of the above procedures, rounding or not, apply.”

DTNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

³ See Consumer Information; New Car Assessment Program, 79 FR 28594 (May 16, 2014).

⁴ See Paul Jackson Rice, Chief Counsel, NHTSA, to David G. Dick Acts Testing Labs, Inc.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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